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8
9 **BEFORE THE**
10 **CALIFORNIA BOARD OF ACCOUNTANCY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 David M. Rivkin
14 3830 Valley Centre Drive, Suite 705-781
San Diego, California 92130

15 Certified Public Accountant
16 Certificate No. CPA 49855,

17 Respondent.

Case No. AC-2006-33

In re: KPMG Tax Shelters

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

18 In the interest of settling this matter, consistent with the public interest and the
19 responsibilities of the California Board of Accountancy of the Department of Consumer Affairs,
20 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
21 be submitted to the Board for approval and adoption as the final disposition of Accusation No.
22 2006-33, relating to the Certified Public Accountant License of Respondent David M. Rivkin.

23 **PARTIES AND JURISDICTION**

24 1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of
25 Accountancy (the "Board"). She brought this action solely in her official capacity and is
26 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
27 and by Jeanne C. Werner and Diann Sokoloff, Deputy Attorneys General.

28 2. On or about January 29, 1988, the California Board of Accountancy issued Certified

1 Public Accountant Certificate Number 49855 to David M. Rivkin, Respondent. The Certified
2 Public Accountant Certificate was in full force and effect at all times relevant to the charges
3 brought herein and is currently renewed in an active status through November 30, 2007. The
4 certificate has not been the subject of prior Board discipline. Respondent is represented in this
5 proceeding by attorneys Patrick Q. Hall, Esq. and Gregory A. Vega, Esq., of Seltzer Caplan
6 McMahon Vitek, A Law Corporation, in San Diego, California.

7 3. Accusation No. AC-2006-33 was filed before the Board and is currently pending
8 against Respondent. The Accusation and all other statutorily required documents were properly
9 served on Respondent, and Respondent has timely filed his Notice of Defense contesting the
10 Accusation. A copy of Accusation No. AC-2006-33 is attached as Exhibit A and incorporated
11 herein by reference.

12 WAIVERS & CONTINGENCY

13 4. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. AC-2006-33. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of, this Stipulated Settlement and
16 Disciplinary Order.

17 5. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to
21 compel the attendance of witnesses and the production of documents; the right to reconsideration
22 and court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly,
24 and intelligently waives and gives up each and every one of these rights.

25 6. It is understood that in signing this stipulation rather than further contesting the
26 Accusation, Respondent is voluntarily consenting to the adoption of this Stipulated Settlement as
27 the Board's Decision, enabling the Board of Accountancy of the State of California to issue the
28 following order without further legal process. Respondent represents that no tender, offer,

1 promises, threats or inducements of any kind whatsoever have been made by the Board or any
2 member, officer, agent or representative thereof in consideration of this settlement offer or
3 otherwise to induce him to so consent.

4 7. This stipulation shall be subject to approval by the Board. Respondent understands
5 and agrees that Complainant, her counsel and the staff of the Board may communicate directly
6 with the Board regarding this stipulation and settlement, without notice to or participation by
7 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that
8 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
9 considers and acts upon it.

10 8. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
11 Settlement and Disciplinary Order shall be withdrawn. It shall be of no force or effect, except for
12 this paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action
13 between the parties, and shall not be relied upon or introduced in any disciplinary, or other,
14 action or proceeding by either party hereto. In the event that the Stipulated Settlement is not
15 adopted, nothing recited herein shall be construed as a waiver of Respondent's right to a hearing
16 or as an admission of the truth of any of the matters charged. Communications pursuant to this
17 paragraph, and consideration of this matter, shall not disqualify the Board or other persons from
18 future participation in this or any other matter affecting Respondent. Respondent agrees that
19 should the Board reject this Stipulated Settlement and if this case proceeds to hearing,
20 Respondent will assert no claim that the Board was prejudiced by its review and discussion of
21 this Stipulation or of any records related hereto.

22 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

23 9. With the exception of the matters asserted in paragraph 32.A., Respondent admits the
24 matters asserted in paragraphs 13 through 28 in the Accusation (Exhibit A hereto) and agrees that
25 they form bases for discipline of his license as alleged in paragraphs 29 through 35 of the
26 Accusation. With respect to paragraph 32.A., Respondent expressly denies that he was involved
27 in, or acquiesced in, the failure of KPMG to register the tax shelters as required, and asserts that
28 he was misled by KPMG personnel regarding the necessity of registering the tax shelters.

Respondent agrees that, based upon these admissions and agreements, his license is subject to discipline under Business and Professions Code Section 5100, as set forth in Accusation No. 2006-33, and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

10. Respondent further agrees not to take any action or make any public statement that creates, or tends to create, the impression that any of the matters set forth in the Stipulated Settlement, Order and Decision are without a factual basis.

11. The Board, in accepting this Stipulation, is foregoing its right to institute further disciplinary proceedings against Respondent based upon his conduct related to tax shelters up to the time of the filing of the Board's charges. However, the Board reserves the right to initiate or continue investigations and administrative proceedings related to the conduct of other Board licensees who may have been involved in acts or omissions related to these or other tax shelters, as well as any other violations of the Accountancy Act which may have occurred by Board licensees in relation to tax shelters.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

IN CONSIDERATION OF THE FOREGOING admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 49855, issued to Respondent David M. Rivkin, is revoked. However, the revocation is stayed and Respondent's certificate is placed on probation for five (5) years on the following terms and conditions.

1. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 49855 issued to David M. Rivkin is suspended for a period of three (3) years. During the period of suspension the Respondent shall engage in no activities for which certification as a Certified Public

1 Accountant or Public Accountant is required as described in Business and Professions Code,
2 Division 3, Chapter 1, Section 5051. Notwithstanding the suspension, Respondent shall comply
3 with the probationary conditions set forth below.

4 **2. Active License Status.** Respondent shall at all times maintain an active license status
5 with the Board, including during any period of suspension. If the license is expired at the time
6 the Board's decision becomes effective, the license must be renewed within 30 days of the
7 effective date of the decision.

8 **3. Comply With Probation and Cooperate with Board.** Respondent shall fully
9 comply with the terms and conditions of the probation imposed by the Board and shall cooperate
10 fully with representatives of the Board^{1/} in its monitoring and investigation of the Respondent's
11 compliance with probation terms and conditions. Respondent shall keep the Board informed
12 regarding how to contact him as required by the Board or its designees. Respondent voluntarily
13 agrees to fully cooperate with, and make himself available to, the Board and its designees,
14 including the Office of the Attorney General, without the necessity of a subpoena, in any
15 investigation of other Board licensees regarding tax shelters, including, but not limited to, the
16 providing of interviews, statements, affidavits, declarations, and any other documents or other
17 types of information requested, consistent with the requirements of confidentiality and law.
18 Respondent, if called to do so, shall cooperate with the Board and shall testify at any subsequent
19 administrative or civil proceeding if asked to do so by the Board.

20 **4. Compliance with Court Orders.** Respondent shall fully comply with all
21 obligations incurred and orders imposed in the criminal proceedings referenced in paragraph 23
22 of the Accusation and shall fully communicate, as permitted by law, with the Board or its
23 designees concerning his compliance and those proceedings as part of his obligation to report to
24 the Board during the probationary period.

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26 _____
27 1. The term Board as used hereinafter in these probationary conditions may refer to the
28 Board or its designees, including the Complainant, the Chief of Enforcement, other Board staff,
Deputy Attorneys General, consultants, etc. as designated by the Board, the Complainant,
and/or the Board's Chief of Enforcement.

1 **5. Cost Reimbursement.** Respondent shall reimburse the Board for its actual
2 investigation and prosecution costs in this case in an amount not to exceed \$15,000.00. The
3 reimbursement shall be made in quarterly payments and shall be completed prior to Respondent's
4 resumption of practice following the suspension period, unless otherwise agreed in writing by the
5 Board or its designee.

6 **6. Ethics Course/Examination.** Prior to his resumption of practice following the period
7 of suspension, Respondent shall take and pass with a score of 90 percent or better a Board
8 approved ethics examination and shall provide evidence to the Board's probation monitor of
9 compliance with this requirement. If Respondent fails to pass the examination within the time
10 period provided or within two attempts, Respondent shall so notify the Board and shall
11 cease/shall not resume practice until Respondent takes and successfully passes the exam, has
12 submitted proof of same to the Board, and has been notified by the Board that he may resume
13 practice. Failure to pass the required examination no later than 100 days prior to the termination
14 of probation shall constitute a violation of probation.

15 **7. Obey All Laws.** Respondent shall obey all federal, California, other states' and local
16 laws, including those rules relating to the practice of public accountancy in California.

17 **8. Submit Written Reports.** Once Respondent's period of suspension has been served,
18 Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the
19 Board on a form obtained from the Board. At all times during the probationary period,
20 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
21 verification of actions as are required. These declarations shall contain statements relative to
22 Respondent's compliance with all the terms and conditions of probation. Respondent shall
23 immediately execute all release of information forms as may be required by the Board or its
24 representatives.

25 **9. Personal Appearances.** Respondent shall, during the period of probation,
26 appear in person at interviews/meetings as directed by the Board or its designated
27 representatives, provided such notification is accomplished in a timely manner.

28 **10. Practice Investigation.** Respondent shall be subject to, and shall permit, one or

1 more practice investigations of the Respondent's professional practice. Such a practice
2 investigation shall be conducted by representatives of the Board, provided notification of such
3 review is accomplished in a timely manner. However, no notice shall be required if the purpose
4 of the Board's investigation is to determine whether Respondent is in compliance with the order
5 of suspension.

6 **11. Comply With Citations.** Respondent shall comply with all final orders resulting
7 from citations issued by the Board of Accountancy.

8 **12. Tolling of Probation For Out-of-State Residence/Practice.** In the event
9 Respondent should leave California to reside or practice outside this state, Respondent must
10 notify the Board in writing of the dates of departure and return. Periods of non-California
11 residency or practice outside the state shall not apply to reduction of the probationary period, or
12 of any suspension. No obligation imposed herein, including requirements to file written reports,
13 to cooperate with the Board investigations, or reimburse the Board costs, shall be suspended or
14 otherwise affected by such periods of out-of-state residency or practice except at the written
15 direction of the Board.

16 **13. Violation of Probation.** If Respondent violates probation in any respect, the Board,
17 after giving Respondent notice and an opportunity to be heard, may revoke probation and carry
18 out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is
19 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
20 matter is final, and the period of probation shall be extended until the matter is final.


21 **14. Completion of Probation.** Failure to complete the probationary requirements shall
22 automatically extend the period of probation and the Board shall have continuing jurisdiction of
23 this matter until the condition is satisfied. Upon successful completion of probation,
24 Respondent's license will be fully restored.

25 **ACCEPTANCE**

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
27 fully discussed it with my attorney, Patrick Q. Hall. I understand the stipulation and the effect it
28 will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement

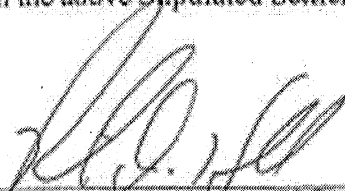
1 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the California Board of Accountancy.

3 DATED: March 13, 2007.

4 
5 DAVID M. RIVKIN
Respondent

6 I have read and fully discussed with Respondent David M. Rivkin the terms and
7 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
8 Order. I approve its form and content.

9 DATED: March 13, 2007.

10 
11 PATRICK O. O. HALL, ESQ. and
12 GREGORY A. VEGA, ESQ.
13 Seltzer Caplan McMahon Vitek
San Diego, California
Attorneys for Respondent


14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the California Board of Accountancy of the Department of
17 Consumer Affairs.

18 DATED: March 13, 2007.

19 EDMUND G. BROWN JR., Attorney General
20 of the State of California

21 WILBERT E. BENNETT
Supervising Deputy Attorney General

22 
23 JEANNE C. WERNER
24 DIANN SOKOLOFF
25 Deputy Attorneys General

26 Attorneys for Complainant
27
28

Exhibit A
Accusation No. AC-2006-33

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JEANNE C. WERNER, State Bar No. 93170
DIANN SOKOLOFF, State Bar No. 161082
3 1515 Clay Street, 21st Floor~P.O. Box 70550
Oakland, CA 94612-0550
4 Telephone: (510) 622-2226/-2212~Facsimile:(510) 622-2121
Deputy Attorneys General
5 California Department of Justice
6 Attorneys for Complainant

7 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2006-33 (Rivkin)
In re: KPMG Tax Shelters

11 David M. Rivkin
3830 Valley Centre Drive, Suite 705-781
12 San Diego, California 92130

ACCUSATION

13 Certified Public Accountant
Certificate No. CPA 49855,

14 Respondent.
15

16 Carol Sigmann, the Complainant herein, alleges:

17 **PARTIES AND JURISDICTION**

18 1. The Complainant herein, Carol Sigmann, brings this Accusation under Business and
19 Professions Code Section 5100 solely in her official capacity as the Executive Officer of the
20 California Board of Accountancy, Department of Consumer Affairs ("Board").

21 2. On or about January 29, 1988, the Board issued Certified Public Accountant
22 Certificate No. 49855 to David M. Rivkin. The certificate is renewed through November 30,
23 2007, and has not been the subject of prior Board discipline.

24 3. This Accusation is brought before the Board under the authority of Section 5100 of the
25 Business and Professions Code, which provides, in relevant part, that, after notice and hearing,
26 the Board may revoke, suspend or refuse to renew any permit or certificate granted for
27 unprofessional conduct which includes, but is not limited to, one or any combination of the
28 causes specified therein, including willful violations of the Accountancy Act and willful

violations of rules and regulations promulgated by the Board.

4. Business and Professions Code^{1/} Sections 118(b) and 5109 provide in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not deprive the Board of its authority to investigate, or to institute or continue a disciplinary proceeding against, a licensee upon any ground provided by law, or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

STATUTORY AND REGULATORY PROVISIONS

5. Code Section 5100 provides, in relevant part, that, after notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted, or may censure the holder of that permit or certificate, for unprofessional conduct which includes, but is not limited to, one or any combination of the causes specified therein, including, in pertinent part:

5100 (a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant.

5100(c) Dishonesty, fraud, (or) gross negligence . . . in the practice of public accountancy.

5100(g) Willful violation of the Accountancy Act or a board rule promulgated thereunder.

5100(j) Knowing preparation, publication, or dissemination of false, fraudulent or materially misleading financial statements, reports, or information.

6. Section 5106 provides in pertinent part that a conviction includes a plea of guilty.

7. Title 16, California Code of Regulations, Section 99^{2/} (Board Rule 99), provides that a crime or act is substantially related to the qualifications, functions, or duties of a CPA if, to a substantial degree, it evidences present or potential unfitness to perform the functions

1. All statutory references are to the Business and Professions Code unless otherwise indicated.

2. All "Board Rule" references are to Title 16, California Code of Regulations, Section 1 through 99, unless otherwise noted.

1 authorized by the licensee's certificate or permit in a manner consistent with the public health,
2 safety, or welfare. Rule 99 provides that acts or crimes involving dishonesty, fraud or gross
3 negligence in the practice of public accountancy, or fiscal dishonesty or breach of fiduciary
4 responsibility of any kind, are included in those acts or crimes which are, by definition,
5 substantially related to the qualifications, functions or duties of a certified public accountant.

6 8. Relevant sections of Title 18 (Crimes and Criminal Procedure) of the United States
7 Code provide as follows:

8 A. Section 371 (conspiracy) provides, in relevant part, that “[i]f two or more persons
9 conspire either to commit any offense against the United States, or to defraud the United States,
10 or any agency thereof in any manner or for any purpose, and one or more of such persons do any
11 act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not
12 more than five years, or both.” (18 U.S.C. §371.)

13 B. Section 7201 (tax evasion) provides that “[a]ny person who willfully attempts in any
14 manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition
15 to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be
16 fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the
17 costs of prosecution.” (18 U.S.C. §7201.)

18 9. Licensees are required by Board Rule 5 to comply with all Board rules, including
19 Board Rule 58, which provides that licensees engaged in the practice of public accountancy shall
20 comply with all applicable professional standards.

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1 *Conduct*, which includes Section I - Principles and Section II - Rules. Both the Principles
2 (Articles III and VI) and the Rules are relevant to the allegations herein. For example, Rule 102
3 (Integrity and Objectivity), provides that:

4 "In the performance of any professional service, a member shall maintain
5 objectivity and integrity, shall be free of conflicts of interest, and shall not
6 knowingly misrepresent facts or subordinate his or her judgment to others."

6 C. AICPA *Statements on Standards* for Tax Standards^{5/}, including:

7 (1.) TS Section 100 - Tax Return Positions.

8 (2.) TS Section 600 - Knowledge of Error: Return Preparation.

9 (3.) TS Section 800 - Form and Content of Advice to Tax Payers.

10 **Cost Recovery**

11 11. Code Section 5107(a) provides in pertinent part that the Executive Officer of the
12 Board may request the administrative law judge, as part of the proposed decision in a disciplinary
13 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
14 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and
15 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
16 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of
17 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of
18 investigation and prosecution of the case.

19 **Public Protection**

20 12. Code Section 5000.1 provides as follows: "Protection of the public shall be the
21 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
22 and disciplinary functions. Whenever the protection of the public is inconsistent with other
23 interests sought to be promoted, the protection of the public shall be paramount."

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28 5. The AICPA *Statements on Standards*, Tax Standards, are codified as "TS" with section
numbers, e.g., TS Section 100.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **Conviction of Crimes Substantially Related to Practice**
3 **[Bus. & Prof. Code Section 5100(a)]**

4 Background - Tax Shelters

5 13. At all times relevant to this Accusation, Respondent was an employee of KPMG
6 LLP^{6/}. First employed by the firm in 1985, he was a tax partner in KPMG's San Diego office
7 from about July 1999 until April 30, 2004, the date of his resignation. Respondent was a partner
8 in Personal Financial Planning, or "PFP," the KPMG group which provided tax advice to high
9 net worth individuals. Respondent was also associated with Innovative Strategies ("IS"), which
10 focused on designing, marketing, and implementing tax shelters for individual clients.^{7/}
11 Respondent's involvement in fraudulent tax shelters is the subject matter of this Accusation.

12 14. Beginning at least in or about 1999, Respondent and other KPMG tax personnel and
13 associates conspired to do the following:

14 A. Devise, market, and implement fraudulent tax shelters;

15 B. Prepare and cause to be prepared, and file and caused to be filed, with the United
16 States Internal Revenue Service (IRS) and other taxing authorities, false and fraudulent
17 individual income tax returns containing the fraudulent tax shelter losses; and

18 C. Fraudulently conceal those shelters from the IRS and other taxing authorities.

19 15. Among the fraudulent tax shelter transactions designed, marketed, and/or
20 implemented by Respondent and other KPMG tax personnel and associates were OPIS
21 ("Offshore Portfolio Investment Strategy") and BLIPS ("Bond Linked Issue Premium

22
23
24 6. KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating
25 several offices in California. KPMG was engaged in providing tax services to corporate and
individual clients and providing audit services to corporate, governmental and other clients.

26 7. Several other KPMG personnel, including partners, managers, associates, and
27 employees, participated in various tax shelter transactions referred to herein, and will be
28 referred to as "KPMG tax personnel." Others not employed at KPMG, including banks,
lawyers and law firms, and other individuals and entities, also participated in various tax shelter
transactions referred to herein.

Structure"), and their variants. OPIS and BLIPS are described below.

16. Respondent was the KPMG engagement partner in two (2) OPIS^{8/} transactions. OPIS was marketed and sold by KPMG from at least in or about 1998 through at least in or about 1999 to at least 170 wealthy individuals and generated at least \$2.3 billion in phony tax losses.

17. Respondent was the engagement partner in six (6) BLIPS^{9/} transactions. BLIPS was marketed and sold by KPMG from at least in or about 1999 through at least in or about 2000 to at least 186 wealthy individuals, and generated at least \$5.1 billion in phony tax losses.

18. The tax shelters described in paragraphs 13 through 17 above were among those designed and marketed as a means for wealthy individuals with taxable income or gains, in excess of \$20 million in 1998-2000, fraudulently to reduce or eliminate their individual income taxes to the IRS on the income or gains. Respondent's client activity involved the tax years 1999-2000 (see paragraph 29 below).

19. The tax shelters also defrauded the California Franchise Tax Board ("FTB"), in that their implementation resulted in the preparation of, the filing of, and the paying of tax on false and fraudulent state income tax returns containing the fraudulent tax shelter losses and tax concealment.

8. OPIS was designed to generate phony capital losses in excess of \$20 million through the use of an entity created in the Cayman Islands. The client purportedly entered into an "investment" transaction with the Cayman Islands entity by purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity purportedly made a pre-arranged series of investments, including the purchase, from a bank, of bank stock using money purportedly loaned by the bank, followed by a repurchase of that stock by the pertinent bank at a prearranged price. The tax shelter transactions were devised to last for only approximately 16 to approximately 60 days, and the duration of the shelter was pre-determined. KPMG's gross fees from OPIS transactions were at least \$28 million.

9. BLIPS was designed to generate any amount of capital and ordinary tax losses through a series of pre-arranged transactions that involved the client purportedly borrowing money from one of four banks (of which three were audit clients of KPMG at the time) in order to make purported foreign currency investments including currencies that were "pegged" to the United States dollar. The bank involved in the purported loan also served as the counter party on all of the purported currency and other transactions involved in BLIPS. The transaction was designed so that, after a short period of time (almost always approximately 67 days), the client would exit the purported BLIPS transaction and trigger the desired tax loss. KPMG's gross fees from BLIPS transactions were at least \$53 million.

20. Instead of the wealthy clients paying U.S. individual income taxes that were legally owed (generally 20% to 35% of their income or gains), the client could choose the amount of tax loss desired, and pay an "all-in" cost generally equal to approximately 5 to 7% of the desired tax loss. This "all-in" cost included the fees of KPMG and related entities.^{10/} The size of the purported "investments," the timing of the transactions, and the amount of the fees were all pre-determined based on the tax loss to be generated. The tax shelter schemes resulted in significant fees being paid to KPMG.

21. The law in effect from at least in or about August 1997 provided that, if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax benefit was supported by *an independent opinion* relied on by the taxpayer in good faith that the tax benefit was "*more likely than not*" to survive IRS challenge.

22. KPMG tax personnel and associates issued KPMG *opinion letters*, or caused others to issue opinion letters, that falsely claimed that the tax losses purportedly generated by the tax shelters were more likely than not to withstand IRS challenge. Respondent participated, with others, in providing tax clients with opinion letters as part of an effort to conceal the true nature of the tax shelter from the IRS, to attempt to evade the wealthy clients' U.S. and state individual income taxes, and to shield the clients from IRS and state penalties for underpayment of income taxes. Thus, false and fraudulent opinion letters were issued with the intent that the clients would claim the fraudulent tax shelter losses on tax returns and provide the opinion letter, and other false and fraudulent transactional documents and/or the false and fraudulent representations and statements contained therein to the IRS and other taxing authorities, if and when the clients were audited.

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10. Only a small portion of the cost was used to execute purported "investments" that were designed to conceal the tax shelters.

Convictions

23. Respondent is subject to disciplinary action pursuant to Code Section 5100(a) in that, on March 27, 2006, he was convicted, by pleas of guilty, in the United States District Court, Southern District of New York, in Case No. S2 05 Cr.888 (LAK), *United States v. David Rivkin*^{11/}, of one felony violation of 18 U.S.C. Section 371 (conspiracy) and one felony violation of 18 U.S.C. Section 7201 (tax evasion), violations of federal law, contained in a *Superceding Information*. The charges upon which Respondent's guilty pleas were based are summarized below.

Count One—Conspiracy

24. Count One charged Respondent with conspiring to defraud the United States and the Internal Revenue Service in violation of 18 U.S. C. § 371, and, in particular, with knowingly and willfully agreeing, with others to design, market, implement and conceal a series of fraudulent tax shelters (in violation of Sections 7201, 7206(1) and 7206(2) of the Internal Revenue Code). It was charged, *inter alia*, that he and others conspired to prepare and execute false and fraudulent documents to deceive the Internal Revenue Service, including but not limited to engagement letters, transactional documents, representation letters and opinion letters; to execute financial transactions to implement the fraudulent tax shelters; to prepare and file false and fraudulent tax returns; and to take various steps to conceal from the Internal Revenue Service the existence of the shelters and the true facts about them.

Count Two—Tax Evasion

25. Count Two charged Respondent with tax evasion in violation of 26 U.S.C. § 7201. It was charged, *inter alia*, that he and others knowingly and willfully attempted to evade, and

11. In or about October 2005, a Superceding Indictment was filed against nineteen individual defendants, many of them former KPMG tax personnel, in *U. S. v. Stein et al.* The **Superceding Indictment** charged the defendants with conspiracy and tax evasion. The complete caption of the case is *United States of America against Jeffrey Stein, John Lanning, Richard Smith, Jeffrey Eischeid, Philip Wiesner, John Larson, Robert Pfaff, David Amir Makov, Larry DeLap, Steven Gremminger, Raymond J. Ruble, Gregg Ritchie, Randy Bickham, Mark Watson, Carol Warley, David Rivkin, Carl Hasting, Richard Rosenthal and David Greenberg, Defendants (U.S. v. Stein)*, Case No. S1 05 Cr. 888 (LAK).

1 evaded, a substantial part of the income taxes due and owing to the United States by tax shelter
2 clients and others in violation of Internal Revenue Code § 7201 by impairing, defeating and
3 obstructing the lawful governmental functions of the Internal Revenue Service in the
4 ascertainment, evaluation, assessment and collection of taxes due and owing by tax shelter
5 clients; by making and subscribing United States individual income tax returns which were not
6 true and correct as to every material matter in violation of Internal Revenue Code § 7206(1),
7 which were verified by written declarations that they were made under the penalties of perjury,
8 when they were believed to be true and correct as to every material matter; and by aiding and
9 assisting in the preparation and presentation of U.S. individual income tax returns which were
10 fraudulent and false as to material matters in violation of Internal Revenue Code § 7206(2).

11 ***Respondent's Pleas***

12 26. Respondent admitted, as charged in Count One of the *Superseding Information*, that
13 he:

14 "[F]or all or part of the period commencing in or about 1996 and continuing at least into
15 approximately 2005 with one or more other persons, unlawfully, willfully and knowingly
16 [did] conspire to defraud the United States and an agency of the United States, namely the
Internal Revenue Service, and to commit offenses against the United States, specifically
violations of Sections 7201, 7206(1), and 7206(2) of the Internal Revenue Code . . .

17 [And that it was] a part and object of that conspiracy that [Respondent] and at least one
18 other person unlawfully, willfully and knowingly, would and did defraud the United
States of America and the Internal Revenue Service by impeding, impairing, defeating
and obstructing the lawful governmental functions of the Internal Revenue Service in the
ascertainment, evaluation, assessment and collection of income taxes . . .

20 [And that it was] further a part and an object of the conspiracy that [Respondent] and at
least one other person unlawfully, willfully and knowingly, would and did attempt to
evade and defeat a substantial part of the income taxes due and owing to the United States
by tax shelter clients and others in violation of Section 7201 of the Internal Revenue
Code . . .

23 [And that it was] further a part and an object of the conspiracy that [Respondent] and at
least one other person unlawfully, willfully and knowingly, would and did make and
subscribe and cause others to make and subscribe United States individual, corporation
and partnership income tax returns which contained, and were verified by written
declarations, that they were made under the penalties of perjury, and that [Respondent]
and at least one other co-conspirator did not believe to be true and correct as to every
material matter, all in violation of Section 7206(1) of the Internal Revenue Code . . .

27 [And that it was] further a part and an object of the conspiracy that [Respondent] and at
least one other person, unlawfully, willfully and knowingly, would and did aid and assist
28 in and procure counsel and advise the preparation and presentation under the Internal

1 Revenue Laws, of certain United States individual, corporation and partnership income
2 tax returns which were fraudulent and false as to material matters in violation of Section
7206(2) of the Internal Revenue Code . . .

3 [And that Respondent did], in furtherance of that conspiracy and to effect its illegal
4 objects, on or about April 30, 1999 and May 1 of 1999, meet in Dallas, Texas, for a
BLIPS task force meeting.”

5 27. Respondent admitted, with respect to Count Two of the *Superseding Information*,
6 that he:

7 “[F]rom at least January 1, 1999 to in or about May 2004, in the Southern District of
8 New York and elsewhere, along with at least one co-conspirator, [did] unlawfully,
willfully and knowingly, attempt to evade and defeat a substantial part of the income tax
9 due and owing by [certain] tax shelter clients . . . enumerated in paragraph 80^{12/} of the
Superseding Information by causing to be committed the following acts, among others:

- 10 a. Preparing and executing false and fraudulent documents to deceive the Internal
11 Revenue Service, including but not limited to engagement letters, transactional
documents, representation letters and opinion letters;
- 12 b. Creating entities to be used in executing tax shelter transactions;
- 13 c. Executing financial transactions to implement the fraudulent tax shelters;
- 14 d. Preparing and filing false and fraudulent tax returns; and
- 15 e. Taking various steps to conceal from the Internal Revenue Service the
16 existence of the shelters, their true facts, and the roles of certain conspirators in
17 designing, marketing and implementing the shelters, including but not limited to,
failing to register the shelters, using sham attorney-client privilege claims, and
18 concealing documents and providing false and misleading information in response
to Internal Revenue Service and Senate investigations.”

19 28. Respondent admitted that the information contained in the Table reproduced below
20 (which appears in paragraph 80 of the *Superseding Information*, and which relates to Count Two
21 therein) is “substantially accurate.” Respondent acknowledged that the approximate amount of
22 loss attributable to the nine (*sic*) client tax returns set out in Count Two of the information was
23 \$235 million. The Court clarified that this was a pre-tax loss^{13/} (attributable to nine clients, for
24 ten tax returns) of \$235 million, as set forth below:

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26 _____
27 12. See Table in paragraph 28.

28 13. Not all of these losses were claimed on the respective filed tax returns.

TABLE

Respondent's Clients Tax Return Pre-Tax Loss Approx Date Filed

Client 1	1999	1040	\$ 25 million	04/15/2000
Client 2	1999	1040	\$ 59 million	04/15/2000
Client 3	1999	1040	\$ 20 million	04/15/2000
Client 4	2000	1040	\$ 30 million	10/15/2001
Client 5	1999	1040	\$ 9 million	10/19/2000
Client 5	2000	1040	\$ 17 million	06/18/2001
Client 6	1999	1040	\$ 10 million	10/16/2000
Client 7	1999	1040	\$ 10 million	10/26/2000
Client 8	1999	1040	\$ 20 million	10/18/2000
Client 9	2000	1040	\$ 35 million	10/01/2001

TOTAL Pre-Tax Loss Attributable to Shelters: \$ 235 million

29. Upon inquiry from the Court, Respondent admitted, in his own words, that he was guilty of the crimes charged because he:

"[C]onspired and agreed with a number of other people, both within the Southern District of New York and elsewhere, to market tax shelters including Bond Linked Issue Premium Structure, otherwise known as BLIPS and Offshore Portfolio Investment Strategy, otherwise known as OPIS.

BLIPS and OPIS were designed and approved by senior partners and leaders at KPMG and other entities to allow wealthy taxpayers to claim phony losses on their tax returns through a series of complicated transactions.

The objects of the conspiracy were to help wealthy taxpayers significantly and illegally reduce their tax liability to the United States Internal Revenue Service so that they could keep the money for themselves instead of paying the taxes they owed, and also so that KPMG and other entities could earn significant fees.

My role in the conspiracy was to market and assist in the implementation of the BLIPS transaction and then, later, to assist in marketing OPIS to a few clients who were unable to get involved in BLIPS. These transactions were marketed to various wealthy taxpayers identified by co-conspirators.

I first became involved in these tax shelters in 1999 when I was a Senior Manager (at KPMG) and was trained in the marketing of BLIPS. I attended a meeting at the Dallas Airport in the late spring of 1999 with people from Presidio where I, along with a number of other KPMG employees and partners, were trained in how (to) market and implement BLIPS.

The training at that meeting and on other occasions included a Power Point presentation which was to be shown to the taxpayers.

During and after that meeting I was told which high net worth individuals to approach as potential BLIPS clients. Generally they were individuals who had over \$20 million in capital gains or taxable income for the tax year. I, along with other KPMG partners and representatives of Presidio, then met with some taxpayers in mid to late 1999 and early 2000 and made representations utilizing the Power Point presentation.

1 After the presentations the taxpayers who chose to participate in BLIPS were required by
2 KPMG to sign a representation letter. The representation letter contained materially false
3 statements including a statement to the effect that the taxpayer was engaging in the
4 transaction for investment reasons.

5 The real purpose for the transaction was to generate a phony tax loss which the taxpayers
6 later claimed on their returns.

7 The BLIPS documents were materially false in that they represented, among other things,
8 that the duration of the investment was to be long-term when, in reality, the plan was
9 designed and implemented as a short-term transaction to end before the end of the tax
10 year in order to generate the phony loss(.) and the **purported investment . . . (in) . . .**
11 **pegged currenc(ies)** was made using only the clients' money.^{14/} No massive loan was
12 needed.

13 I assisted some of these taxpayers in preparing the tax returns. I signed at least one return
14 for a client that contained losses generated by (a) transaction which he had entered into
15 solely to generate a phony tax loss. I knew that the losses should not have been claimed
16 on the tax returns and that the taxpayers were claiming the losses to keep the money for
17 themselves instead of paying taxes they owed.

18 KPMG prepared and approved an opinion letter that was to be provided to each of the
19 clients. The KPMG opinion letter also contained materially false statements. For
20 example, the opinion letter represented that the taxpayer had engaged in a long-term
21 investment strategy when, in reality, KPMG's plan was for the taxpayer to withdraw, at
22 the earliest opportunity, to claim phony tax loss.

23 I signed opinion letters knowing them to be false and intending that they would be
24 submitted to the IRS upon audit in order to mislead the IRS about the transactions.

25 As to Count Two, I willfully aided and abetted the evasion of taxes by helping the **nine**^{15/}
26 taxpayers listed in the superseding information engage in BLIPS or OPIS transactions."

27 30. Incorporating by reference the matters set forth in paragraphs 13 through 29 above,
28 Respondent's license is subject to disciplinary action pursuant to Code Section 5100(a) in that his
29 conviction, by guilty plea, of one felony violation of 18 U.S.C. Section 371 (conspiracy) and one
30 felony violation of 18 U.S.C. Section 7201 (tax evasion) constitutes his conviction of crimes
31 substantially related to the qualifications, functions or duties of a certified public accountant,
32 within the meaning of Board Rule 99.

33 //

34 //

35 14. The bolded material was inaccurately transcribed as "...the purported investment. And
36 pegged currency was made...client's...".

37 15. The bolded material was inaccurately transcribed as "denied."

1 **SECOND CAUSE FOR DISCIPLINE**

2 **Fraud in the Practice of Public Accountancy**
3 **[Business and Professions Code § 5100(c)]**

4 31. The matters alleged in paragraphs 13 through 29 are re-alleged as though fully set
5 forth.

6 32. Respondent, serving as the engagement partner for, or involved in, a number of tax
7 shelter transactions listed above, participated in employing various means to conceal from the
8 IRS and other taxing authorities the fraudulent tax shelters. Respondent's license is therefore
9 subject to disciplinary action based on his involvement or acquiescence in:

10 A. The failure of KPMG to register the tax shelters as required;

11 B. The preparation of, or causing to be prepared, false or fraudulent documentation
12 supporting the implementation of the tax shelters; and/or

13 C. The implementation of the tax shelters, including but not limited to preparing and/or
14 causing to be prepared or participating in the preparation and/or filing of tax returns that
15 fraudulently concealed the phony losses from the IRS.

16 33. Incorporating by reference the matters alleged in paragraphs 30 and 31, cause for
17 discipline of Respondent's license for fraud in the practice of public accountancy is established
18 under Code Section 5100(c).

19 **THIRD CAUSE FOR DISCIPLINE**

20 **Dishonesty in the Practice of Public Accountancy**
21 **[Business and Professions Code § 5100(c)]**

22 34. Complainant realleges paragraphs 13 through 29 and 32 above. Incorporating those
23 matters by reference, cause for discipline of Respondent's license for dishonesty in the practice
24 of public accountancy is established under Code Section 5100(c) based upon his dishonest acts,
25 and omissions in the course of his participation, as described above, in the OPIS and BLIPS tax
26 shelters.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **Gross Negligence in the Performance of Tax Engagements**
3 **[Business and Professions Code § 5100(c)]**

4 35. Complainant realleges paragraphs 10 and 13 through 29 and 32 above. Incorporating
5 those matters by reference, cause for discipline of Respondent's license for gross negligence in
6 the practice of public accountancy is established under Code Section 5100(c) based upon his
7 conduct, which constituted extreme departures from applicable professional standards.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **Failure to Observe Professional Standards in Performance of Tax Engagements**
10 **[Board Rule 58/Bus. & Prof. Code § 5100(g)]**

11 36. Complainant realleges paragraphs 10 and 13 through 29 and 32 above. Incorporating
12 those matters by reference, cause for discipline of Respondent's license is established in that his
13 failure to comply with professional standards applicable to tax engagements constitutes the
14 willful violation of Board Rule 58, providing cause for discipline of his license under Code
15 Section 5100(g).

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

19 1. Revoking, suspending or otherwise imposing discipline upon Certified Public
20 Accountant Certificate Number CPA 49855, issued to David M. Rivkin;

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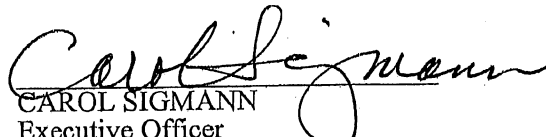
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- 1 2. Ordering Respondent to pay the California Board of Accountancy its
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code Section 5107; and
4 3. Taking such other and further action as may be deemed proper.

5 DATED: March 9, 2007.


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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